

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 8, 2003

SENATE BILL

No. 760

Introduced by Senators Scott and Alpert

February 21, 2003

An act to amend *and repeal* Section 6368.8 of, and to add Section 6368.9 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 760, as amended, Scott. Sales and use taxes: exemptions: public passenger vehicles.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax. One of these exemptions, effective until January 1, 2004, is an exemption for specified sales and leasebacks of qualified equipment, as defined, used in the provision of public transportation services, as well as for purchases of leased or subleased qualified equipment purchased by a qualified person, as defined, at the end of the term of the lease or sublease.

This bill would ~~indefinitely~~ extend *the operation of* this provision until January 1, 2009.

Existing law requires that the Legislative Analyst conduct a study on the impact of this exemption, and report its findings to the Legislature by January 1, 2003.

This bill would instead require the Legislative Analyst to report the results of its study to the Legislature by January 1, 2008, and would add an additional element to the study.

The bill would also require the qualified person to submit certain documents to specified state entities no later than 5 days after the closing of any lease-leaseback transaction, and would require the Franchise Tax Board to assess the information provided in those documents and report on the revenue loss to the state.

~~In the event that this exemption is otherwise repealed~~

Upon the repeal of this exemption, this bill would exempt option purchases of leased or subleased qualified equipment by a qualified person, if the purchaser and equipment were otherwise eligible for the exemption at the time the lease or sublease was entered into.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6368.8 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 6368.8. (a) There are exempted from the taxes imposed by
- 4 this part, the gross receipts from the sale in this state of, and the
- 5 storage, use, or other consumption in this state of, qualified
- 6 equipment, provided all of the following conditions are satisfied:
- 7 (1) The qualified equipment is sold or leased by a qualified
- 8 person.

1 (2) The qualified person has paid sales tax reimbursement or
2 use tax with respect to the qualified person's purchase or
3 acquisition of the qualified equipment.

4 (3) The qualified equipment is sold or leased by the qualified
5 person and the qualified equipment is leased back to the qualified
6 person.

7 (b) For purposes of this section:

8 (1) "Qualified person" means an entity that qualifies as a
9 claimant, as defined in Section 99203 of the Public Utilities Code,
10 eligible to receive allocations under the Transportation
11 Development Act (commencing with Section 99200 of the Public
12 Utilities Code).

13 (2) "Qualified equipment" means a vehicle or vessel and any
14 related equipment used in the provision of public transportation
15 services, including, but not limited to, bus and van fleets, ferry
16 boats, rail passenger cars, locomotives, other rail vehicles, train
17 control equipment, fare collection equipment, communication
18 systems, global positioning systems, and other systems and
19 accessories related to the operation of a vehicle or vessel used in
20 the provision of public transportation services.

21 (c) The exemption provided by this section also applies to
22 subsequent purchases of qualified equipment by a qualified person
23 at the end of the term of a lease or sublease of qualified equipment,
24 provided the provisions of paragraphs (1), (2), and (3) of
25 subdivision (a) are met.

26 (d) The Legislative Analyst, in consultation with the State
27 Board of Equalization and the Franchise Tax Board, shall conduct
28 a study on the impact of the exemption authorized under this
29 section and shall report to the Legislature, by January 1, ~~2003~~
30 ~~2008~~, on the following:

31 (1) The number of persons utilizing the exemption.

32 (2) The fiscal impact of the exemption, including the total
33 exemption amount and any depreciation claimed for qualified
34 equipment.

35 (3) The impact, if any, of federal law, including, but not limited
36 to, Revenue Ruling 99-14, on the utilization of the exemption.

37 (4) The impact of the exemption on California's public transit
38 sector.

39 (5) A recommendation as to whether the exemption should be
40 continued, and if the continuation of exemption is recommended,

1 recommendations on modifications to the existing exemption
2 provisions that should be implemented.

3 (6) *The impact, if any, on the California personal income and*
4 *corporation taxes, based on the information provided in*
5 *subdivisions (e) and (f).*

6 (e) *No later than five business days after the closing of any*
7 *transaction executed pursuant to paragraph (3) of subdivision (a),*
8 *the qualified person shall provide to the Franchise Tax Board, the*
9 *Legislative Analyst, the Department of Transportation, the Senate*
10 *Committee on Revenue and Taxation, and the Assembly Committee*
11 *on Revenue and Taxation, the following documents:*

12 (1) *Copies of the consent letter obtained by the qualified person*
13 *from the Federal Transit Administration (FTA) within the United*
14 *States Department of Transportation, authorizing the transaction*
15 *under FTA Circular 7020.1: Cross-Border Leasing Guidelines.*

16 (2) *Copies of the appropriate Internal Revenue Service Form*
17 *8264: Application for Registration of a Tax Shelter, that is related*
18 *to the transaction.*

19 (3) *A report describing how the qualified person is using the*
20 *benefits derived from the lease-leaseback transaction, and, where*
21 *available, the division between the qualified persons and the*
22 *purchasers, including equity partners, of the lease or sublease of*
23 *the qualified equipment.*

24 (f) *The Franchise Tax Board, every other year, shall review the*
25 *information it is provided by qualified persons pursuant to*
26 *subdivision (e), and, based on the apportionment of income*
27 *between the qualified persons and the purchasers of the lease or*
28 *sublease of the qualified equipment, including the equity partners,*
29 *assess the revenue loss to the state, if there is any. The board shall*
30 *report its assessment to the Legislative Analyst, the Senate*
31 *Committee on Revenue and Taxation, and the Assembly Committee*
32 *on Revenue and Taxation.*

33 (g) *This section shall remain in effect until January 1, 2009,*
34 *and as of that date is repealed.*

35 SEC. 2. Section 6368.9 is added to the Revenue and Taxation
36 Code, to read:

37 6368.9. (a) There are exempted from the taxes imposed by
38 this part, the gross receipts from the sale in this state of, and the
39 storage, use, or other consumption in this state of, qualified
40 equipment purchased by a qualified person at the end of the term

1 of a lease or sublease of qualified equipment pursuant to any
2 exercise of a purchase option under the lease or sublease, provided
3 the following conditions are satisfied:

4 (1) As of the date the lease or sublease was entered into, the
5 qualified person and qualified equipment were otherwise eligible
6 for exemption under Section 6368.8, as that section read on that
7 same date.

8 (2) The lease or sublease was entered into before the repeal date
9 of Section 6368.8.

10 (b) For purposes of this section, “qualified equipment” and
11 “qualified person” have the same meanings as defined in Section
12 6368.8, as that section read on the date the lease or sublease was
13 entered into.

14 (c) This section shall only become operative if Section 6368.8
15 is repealed and, in that event, shall become operative on the date
16 that section is repealed.

17 SEC. 3. Notwithstanding Section 2230 of the Revenue and
18 Taxation Code, no appropriation is made by this act and the state
19 shall not reimburse any local agency for any sales and use tax
20 revenues lost by it under this act.

21 SEC. 4. This act provides for a tax levy within the meaning of
22 Article IV of the Constitution and shall go into immediate effect.
23 However, the provisions of this act shall become operative on the
24 first day of the first calendar quarter commencing more than 90
25 days after the effective date of this act.

